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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.270 OF 2007

Pravin Pandurang Jadhav & ors. Appellants
versus
Municipal Corporation of Greater Bombay and others Respondents

Mr.S.J.Ghogare for applicants.
Mrs.Geeta Joglekar for respondent no.1.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

PC :

1. The submissions of the advocates for the parties were heard yesterday. The appellants are the original plaintiffs. The appellants have taken exception to the judgement and order dated 20th December 2006 passed by the learned Judge of the City Civil Court, Mumbai by which Notice of Motion taken out by the appellants- plaintiffs has ben dismissed. The appellants are the occupants of different tenements in a Chawl which is admittedly of the ownership of the first respondent. The prayer made by the appellants in the suit is for a declaration that permission

granted for redevelopment of the Chawl is illegal, bad in law and the same is required to be set aside. A prayer for perpetual injunction was made seeking to restrain the respondents from proceeding with the work of redevelopment. The prayer in the Notice of Motion taken out by the appellants is for restraining the respondents from proceeding with the work of redevelopment. By dismissing the Notice of Motion, the said prayer has been rejected.

2. The learned counsel appearing for the appellants submitted that the proposed Co-operative Society of which the second respondent is the Chairman has acted contrary to the interests of the occupants by accepting the proposal of the third respondent. He pointed out that in the meeting of the society it was brought to the notice that another developer has offered far better terms for development of the same property which will be beneficial to the occupants. The learned counsel appearing for the appellants submits that the appellants are not opposed to the development of the property of the first respondent. He submitted that an offer was received from M/s.Lokhandwala Builders to the effect that they are ready and willing to provide

tenements of 330 sq.fts. area each to the occupants of the Chawl. He submitted that the third respondent has offered a lesser area and, therefore, it is not in the interests of the occupants that the development should be carried out through the third respondent as there is another developer who is willing to provide better benefits to the occupants of the Chawl. He, therefore, submitted that the Trial Court has committed an error in rejecting the prayer for temporary injunction.

3. I have considered the submissions made by the advocate for the appellants. The appellants are 18 in number. There are large number of occupants of the premises on the property of the first respondent which is under redevelopment. The occupants who are found to be eligible for allotment are approximately 149 and there are 8 persons occupying the structures for commercial use. It is not in dispute that the proposed society of the occupants by a large majority has decided to appoint the third respondent as a developer. Now, all permissions have been granted for redevelopment of the property.

4. The learned Trial Judge has observed in the

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impugned order that the decision to appoint the third respondent was taken on 7th November 2004 in the meeting of the society. The learned Judge has referred to the proposal submitted by M/s.Lokhandwala Builders on 16th August 2004 by which the said builder had offered to provide tenements of area of 225 sq.ft. each to the eligible occupants. My attention has been invited to the letter dated 5th October 2004 issued by M/s.Lokhandwala Builders. In the said letter there is no specific proposal as regards the area of the tenements to be provided. The learned Trial Judge has referred to an offer made by M/s.Lokhandwala Builders on 15th August 2005 showing willingness to provide an area of more than 330 sq.ft. to each occupant. Considering the fact that when the proposal of the third respondent was considered by the proposed society, M/s.Lokhandwala Builders had not come up with the better offer, the learned Trial Judge has declined to interfere.

5. The view taken by the learned Trial Judge is based on prima facie consideration of the material on record. I find no reason to interfere with the discretionary order passed by the learned Trial Court. There is no merit in

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the appeal. Hence, the same is dismissed. All contentions of the parties in the pending suit are expressly kept open. Civil Application No.388 o 2007 does not survive in view of dismissal of Appeal from Order and it stands dismissed as such.

(A.S.OKA, J.)